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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 I.O. INDIVIDUALLY and I.O. on
4 behalf of his child G.O. a
minor,

5 Plaintiffs,

6 v.

20 CV 5061 (PAC)

7 NEW YORK CITY DEPARTMENT OF
8 EDUCATION,

9 Defendant.

10 -----x
11 New York, N.Y.
June 12, 2021
3:00 p.m.

12 Before:

13 HON. PAUL A. CROTTY,

14 District Judge

15 APPEARANCES

16 LAW OFFICES OF IRINA ROLLER
17 BY: IRINA ROLLER
Attorney for Plaintiff

18 NYC LAW DEPARTMENT
19 BY: BRIAN KRIST
Attorneys for Defendant

L62AAOIC

Conference

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2 (Case called)

3 MS. ROLLER: Irina Roller, attorney for the plaintiff.

4 THE COURT: Hello, Ms. Roller.

5 MS. ROLLER: Good afternoon.

6 MR. KRIST: For the city, Brian Krist, for the New
7 York City Law Department.

8 Good afternoon, everyone.

9 THE COURT: Good afternoon.

10 Mr. Roller, did you want to go first?

11 MS. ROLLER: I would be happy to.

12 Thank you, your Honor.

13 So, this is a fees action for an IVA case in which the
14 plaintiff won the underlying hearing and obtained prevailing
15 party status. There is no dispute with regard to liability.
16 It's a matter of coming to an agreement in terms of legal fees.
17 I've provided the legal fees to Corporation Counsel on
18 October 5, 2020, and to date I do not have a settlement offer.

19 In addition, the defendant did not file an answer in
20 this case in a timely way.

21 THE COURT: Okay. Mr. Krist, what do you have to say?

22 MR. KRIST: Thank you, your Honor.

23 With regard to the nature of the case at large, we
24 agree with plaintiff that this is a fees issue, largely the
25 issue before the Court (inaudible) what will end up being a

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Conference

1 reasonable fee for the work in the underlying proceedings by
2 plaintiff's firm?

3 With regard to the production of billing information,
4 I myself did not hear anything from Ms. Roller for months until
5 I believe the middle of last month. Upon hearing from her we
6 have been going through and trying to find some records that
7 Ms. Roller says she produced in October. I have no reason to
8 doubt that. I just haven't been able to find them. So, I
9 didn't have anything to work off of.

10 Ms. Roller has now given additional copies to me. We
11 have had some discussions about the basis or candidly, what we
12 feel to be a lack of the some of the claims that they're making
13 and we are seeking to address those.

14 With respect to the answer issue, the case was
15 initially stayed in the fall. It remained marked and stayed in
16 PACER and the, if anything, I believe that may have caused an
17 administrative error.

18 THE COURT: Mr. Krist, am I correct that it was stayed
19 at the request of the city?

20 MR. KRIST: It was stayed at the request of the city,
21 your Honor, yes.

22 THE COURT: And so, while you say it was PACERS fault,
23 it's the city's fault, right?

24 MR. KRIST: It certainly -- it was, the confusion at
25 the end of the day was on our part and so, we apologize for

L62AAOIC

Conference

1 that issue. It was stayed prior to my getting assigned to it
2 and it remained at the hearing stage after that and if anything
3 that was our misinterpretation of that. So, the issue that it
4 caused for everyone in terms of the delay is certainly
5 something that we regret but at the same time we don't
6 believe --

7 THE COURT: Could I correct -- you have had the papers
8 for eight months now and they've become lost. They are now
9 lost, Ms. Roller produced some time ago.

10 MR. KRIST: Ms. Roller has indicated that she produced
11 billing information this October pursuant to the Court's order.
12 I have looked in the files that was given to me. I haven't
13 found it. It is not in anything that was given to me. It
14 wasn't in our central tracking system. So, that is -- the
15 first I literally saw anything from, any billing information
16 from Ms. Roller was received after this issue arose last month.

17 THE COURT: Well, if you had proceeded within the 90
18 days that you asked for, you might not have lost the documents
19 or misplaced them.

20 Here is what we are going to do. I want you to
21 resolve this matter by the 21st of June. That's 19 days from
22 now. If you are not able to resolve it by the 21st of June, we
23 are going to have a trial on June 23rd. That's Wednesday,
24 June 23rd. The trial will be what are the reasonable attorneys
25 fees in light of the fact that Ms. Roller is the prevailing

L62AAOIC

Conference

1 party. So, you can use the time to resolve the matter or
2 prepare for the case. But if you don't resolve the matter by
3 the 21st, you are going to go to trial on the 23rd.

4 MR. KRIST: Thank you, your Honor.

5 THE COURT: Is that clear, Ms. Roller?

6 MS. ROLLER: Yes, your Honor.

7 Thank you.

8 THE COURT: Mr. Krist, is that clear?

9 MR. KRIST: It is, your Honor.

10 THE COURT: Okay. Anything else to take up today?

11 MS. ROLLER: Nothing further from the plaintiff.

12 Thank you.

13 THE COURT: Good luck. You ought to settle this
14 matter.

15 How much is it worth, Ms. Roller, 16,000/\$15,000?

16 MS. ROLLER: No. I'm sorry. I'm having trouble
17 pulling up the underlying documents. Give me one second and I
18 can tell you exactly what it is.

19 (Pause)

20 MS. ROLLER: You're right, your Honor. It's under 16,
21 just under \$16,000 for the underlying case and then the current
22 action.

23 I just want to be clear that I have asked Mr. Krist
24 for a timeline on which he can produce an offer or when he will
25 be submitting the comptroller memo settlement authority, and to

L62AAOIC

Conference

1 date, I just haven't received any kind of timeline and there's
2 been no offer. But I want to be clear that it is the
3 plaintiff's desire to settle this case and not spend the
4 Court's time or resources on something like this that can be
5 easily resolved by settlement.

6 THE COURT: Well, I hope that spirit prevails because
7 it should be settled, especially, for an amount that's almost
8 de minimus in light of long delay and caused by the city. So,
9 I hope you are able to resolve it by the 21st. If not, we'll
10 have the trial on the 23rd at ten o'clock in the morning.

11 If you need intervention before then, let us know.
12 We'll be around and we'll be glad to help but you ought to be
13 able to resolve this matter yourself.

14 MS. ROLLER: Agreed.

15 Thank you very much, your Honor.

16 MR. KRIST: If might briefly?

17 THE COURT: Go ahead.

18 MR. KRIST: I apologize for not catching everyone
19 before.

20 I was trying to mention that to ensure that we have
21 all the most updated information, since that's been an issue
22 some other times, if can we could just make sure plaintiff gets
23 us again, the most up-to-date billing records possible.

24 But also again we'll while I have everyone, with
25 regard to hopefully what I feel will be very unlikely

L62AAOIC

Conference

1 eventuality of needing the Court's further intervention, with
2 regard to a trial on this, I wanted to doublecheck, there
3 really aren't, to my knowledge, any factual disputes. I think
4 if we were unable to resolve this, which again, I hope to not
5 be the case, but if for some reason we're not able to revolve
6 this, I think this would be a summary judgment issue.

7 THE COURT: Yeah. Well, summary judgment is
8 discretionary. We are going to have a trial. You say there is
9 a dispute about whether or not the fees were all spent on the
10 underlying matter. So, I'd like what I've done. I am going to
11 stick to it. You can settle the matter if you wish. You can
12 try the matter if you wish. There's not going to be a motion
13 for summary judgment because there's issues fact and the issue
14 fact is the value of the services rendered.

15 So, Ms. Roller will produce -- and don't forget. You
16 know, it's the city that's lost the papers. It's the city
17 that's lost the track of the case. It's the city that's caused
18 the eight-month delay.

19 So, I don't think, Mr. Krist, you are in a good
20 position to bargain. I hereby rule, settle the case or we'll
21 try the case on the 23rd.

22 MR. KRIST: Thank you, your Honor.

23 THE COURT: All right. Good bye.

24 (Adjourned)